

§ 15.16

news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. *Freelance* journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but HUD may also look to the past publication record of a requester in making this determination.

(d) *All other requesters.* HUD will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requests from subjects for records about themselves filed in agencies' systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

[53 FR 37548, Sept. 27, 1988]

§ 15.16 Review of records, aggregating requests and waiving or reducing fees.

(a) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time HUD spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the *initial* review; *i.e.*, the review undertaken the first time HUD analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subse-

24 CFR Subtitle A (4-1-00 Edition)

quent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 15.14.

(b) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When HUD reasonably believes that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, HUD may aggregate any such requests and charge accordingly.

(c) *Waiving or reducing fees.* HUD will furnish documents without charge or at reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The official authorized to grant access to records may waive or reduce the applicable fee where requested. The determination not to waive or reduce the fee will be subject to administrative review as provided in § 15.61 after the decision on the request for access has been made. Six factors shall be used in determining whether the requirements for a fee waiver or reduction are met. These factors are as follows:

(1) *The subject of the request:* Whether the subject of the requested records concerns *the operations or activities of the government*;

(2) *The informative value of the information to be disclosed:* Whether the disclosure is *likely to contribute* to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure:* Whether disclosure of the requested information will contribute to *public understanding*;

(4) *The significance of the contribution to public understanding:* Whether the disclosure is likely to contribute *significantly* to public understanding of government operations or activities;

(5) *The existence and magnitude of a commercial interest:* Whether the requester has a commercial interest that

Office of the Secretary, HUD

§ 15.21

would be furthered by the requested disclosure; and, if so

(6) *The primary interest in disclosure:* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is *primarily in the commercial interest of the requester.*

[53 FR 37549, Sept. 27, 1988]

§ 15.17 Charges for interest and for unsuccessful searches; Utilization of Debt Collection Act.

(a) *Charging interest.* HUD will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. A fee received by HUD, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C. and will accrue from the date of the billing.

(b) *Charge for unsuccessful search.* Ordinarily no charge for search time will be assessed when the records requested are not found or when the records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees shall be charged.

(c) *Use of Debt Collection Act of 1982.* When a requester has failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), HUD may, under the authority of the Debt Collection Act and part 17, subpart C of this title, use consumer reporting agencies and collection agencies, where appropriate, to recover the indebtedness owed the Department.

[53 FR 37549, Sept. 27, 1988]

§ 15.18 Advance payments.

(a) HUD may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) HUD estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then, HUD will notify the requester of the likely cost and obtain satisfactory assurance of full payment

where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), HUD may require the requester to pay the full amount owed plus any applicable interest as provided by § 15.17(a) or demonstrate that he has, in fact, paid the fees, and to make an advance payment of the full amount of the estimated fee before HUD begins to process a new request or a pending request from that requester.

(b) When HUD acts under paragraphs (a)(1) or (a)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after HUD has received fee payments described above.

(c) Where it is anticipated that either the duplication fee individually, the search fee individually, or a combination of the two exceeds \$25.00 over and above the free search time and duplication costs, where applicable, and the requesting party has not indicated in advance a willingness to pay so high a fee, the requesting party shall be promptly informed of the amount of the anticipated fee or such portion thereof as can readily be estimated. The notification shall offer the requesting party the opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet that party's needs at a reduced cost.

[53 FR 37549, Sept. 27, 1988]

§ 15.21 Exemptions authorized by 5 U.S.C. 552.

A requested record shall not be withheld from inspection or copying unless it both: Comes within one of the classes of records exempted by 5 U.S.C. 552; and there is need in the public interest to withhold it. In determining the scope of the classes of records described in paragraph (a) of this section,